1968.

SUPREME COURT OF THE UNITED STATES.

No. 52.

HORACE H. DAY, PL'FF IN ERROR,

vs.

NATHANIEL HAYWARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

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GIDEON, Print.

At a Circuit Court of the United States holden at Newport, within and for the Rhode Island district, on the sixteenth day of June, A. D. one thousand eight hundred and fifty-six. Present, the honorable Benjamin R. Curtis, asso. justice Supreme Court United States; honorable John Pitman, U. S. district judge for R. I. district; George W. Browne, esq., U. S. district attorney for R. I. district; Francis C. Gardiner, esq., U. States marshal; Henry Pitman, clerk circuit court.

In the record of the proceedings of said court, among others are the following, to wit:

HORACE H. DAY
vs.
NATHANIEL HAYWARD. } At law.

Be it remembered, that at the November term, A. D. 1855, of said court, the following writ and declaration were filed:

Writ.

RHODE ISLAND DISTRICT, *sc.:*

The President of the United States of America, to the Marshal of said district, or to his deputy, greeting:

We command you to arrest the body of Nathaniel Hayward, of Colchester, in the State of Connecticut, a citizen of said State of Connecticut, commorant of Providence, in the State of Rhode Island, if he may be found in your district, and for want of his body to attach his goods and chattels, or real estate, to the value of two hundred thousand dollars, and him or those in safe custody keep, to answer the complaint of Horace H. Day, of the city, county, and State of New York, a citizen of said State of New York, at the next circuit court to be holden at Providence, within and for the Rhode Island district, on the fifteenth day of November next ensuing the date hereof, in an action of the case, for that certain letters patent duly issued in the name of the United States of America, according to the acts of Congress in such case made and provided, dated the 31st day of August, A. D. 1836, were granted to Edwin M. Chaffee, a citizen of the United States, he being the first and original inventor thereof, for a new and useful improvement in the application of undissolved caoutchouc to cloths, leather, and other articles, in coloring the same without the aid of a solvent, and in the machinery used in the process; which letters patent were duly extended by the Commissioner of Patents, under the acts of Congress, on the 30th day of August, 1850, for a further term of seven years from the 31st day of August, 1850; and the said Edwin M. Chaffee, on the first day of July, A. D. 1853, duly sold and assigned to said plaintiff the said letters patent for the United States of

America, by deed of assignment thereof, duly recorded in the Patent Office; and the said defendant not ignorant of the premises, but contriving to injure the plaintiff in that behalf, and wrongfully to deprive him of the benefit of said patent right, after the assignment of said letters patent as aforesaid, and since the first day of July, A. D. 1853, to wit, at said Colchester, to wit, at said Providence, has made and used, and vended to others to be used, the invention aforesaid so made and secured by letters patent as aforesaid, and has to the date of the plaintiff's writ continued so as aforesaid to make and use and vend to others to be used, the said invention and improvement so patented and secured as aforesaid, and has infringed the patent right so secured by said letters patent, and belonging to said plaintiff, contrary to the statute in such case made and provided, and other wrongs to the plaintiff has done and committed, as by the declaration to be filed in court will be fully set forth, to the damage of the plaintiff two hundred thousand dollars.

Hereof fail not, and make true return of this writ, with your doings thereon.

Witness the honorable Roger B. Taney, our chief justice, at said Providence, this twenty-second day of October, anno Domini 1855.

HENRY PITMAN, *Clerk.*

UNITED STATES OF AMERICA,
Rhode Island district, sc.

OCTOBER 22*d*, 1855.

For want of the body of the within named defendant to be by me found within my district, I have, at fifty-nine minutes before one o'clock in the morning, attached all the right, title and interest of the defendant in and to the following described real estate, viz: a certain lot of land with all the buildings and improvements thereon, situate in the city of Providence, on the corner of Eddy & Clifford streets, and known as Hartshorn's Rubber Factory; bounding easterly on Eddy street, southerly on land now or late of Benj. Dyer and Thomas J. Stead; and northerly on Clifford street.

I have made further service of this writ by attaching this day at 20 minutes before 10 o'clock A. M., all of the personal estate of the within named defendants in the above described Hartshorne & Company's India-rubber Factory, situate as above described as per schedule hereto annexed, marked A, and made a part of my return.

And also all of the personal estate of the within named defendants in the store or warehouse No. 7, Dorrance street stores, situate on Dorrance street wharf, in the southerly part of the city of Providence, as per schedule marked A, as above, and made a part of my return; and have left true and attested copies of this writ with my doings thereon, with the city clerk of the city of Providence, and with John Sweet and William E. Nimes, they being in possession of the premises, the defendant having no known place of abode within my district.

FRANCIS C. GARDINER,
U. S. Marshal.

Fees—3 services	$6 00
3 copies, 18 folios	6 40
Cash paid in taking inventory.	
" " keepers.	
Custody Fees, 15 days	37 50
Commissions on $500, 1 pr. cent.	5 00
" " $1,995 00 ½ per cent.	997 50
	$1,052 40

(A.)

Inventory of shoes on hand at storehouse and factory, October 22d, 1855.

27,244 prs.	men's overshoes and sandals.
19,282 "	women's " " buskins.
2,026 "	misses' " " "
468 "	boys' boots.
521 "	misses' "
1,578 "	men's short boots.
1,568 "	" country "
577 "	" wading "
1,246 "	boys' overshoes.
371 "	Mis. long boots.
54,878 prs.	

(A.)

Inventory of Cloth, Stockinets, Rubber, &c., on hand October 22d, 1855.

97 ps.	Boston bro. drills	3,880[3] y'ds.
52 "	Mariposa sheeting	2,046[3] "
65 "	Pacific "	2,680 "
67 "	drills, col'd, black and slate	2,634 "
32 "	jeans, " tan	932 "
59 "	col'd flannel, black	1,890 "
36 "	osnaburgs	1,440[3] "
42 "	green elastic wool cloth	865 "
14 "	" felt cloth	293[3] "
1 "	" woollen do.	48[3] "
5½ "	Worcester stockinet	687 "
30 "	slate-col'd stockinet, coarse	677 pounds.
23 "	" " fine	697 "
3 bales	Eng. stockinet.	
10 ps.	do. do. samples.	
31 "	do. do. tan col'd	648 pounds.
3 "	bl'k col'd stockinet, fine	55 "
10 "	" " " coarse	237 "
Lot fine stockinet		1,141¼

1	ps. col'd velvet - - - - - -	18½	y'ds.
10	ps. bro. sheetings - - - - - -	382	"
3½	cases fine wool stockinet - - -	1,450	"
1	bale, 200 bags.		
3	ps. slate stockinet - - - - -	61	lb.
7	" black do. - - - - -	154	"
4	" tan col'd do. - - - - -	80	"
16	" Pacific sheeting - - - -	656	y'ds.
40	y'ds Worcester stockinet.		
130	y'ds cloth inserting.		
57	" green boot lining.		
6	" blue do.		
708	ps. men's wool boot linings.		
185	" " cotton.		
249	" women's and misses' cotton do.		
4,212	men's boot heels.		
12,079	lbs. Para rubber in storehouse.		
7,953	lbs. do. do. ground.		
7,985	" do. do. mixed with compound.		
194	" do. do. run on cloths.		
378	" do. do. coarse.		
6,385	" Carthagenia rubber.		
45,506	" East India " in storehouse.		
629	" do. do. ground.		
4,458	" mixed with compound E. I. rubber.		
509	" old shoe rubber.		
324	" very coarse do.		
7,475	" ground rags.		
1,460	" rags unground.		
22,237	lbs. camphene mixed, (plaster and litharge.)		
38	barrels plaster.		
7½	casks lampblack - - - - -	2,523	lbs.
1	barrel coal tar, 5 bls. hard tar.		
48½	" sulphur - - - - -	7,857	
3½	" camphene - - - - -	146	gs.
½	" rosin.		
562	gs. linseed oil.		
40	gs. sperm oil.		
10	" machinery oil.		
120	lb. Paris white, 97 lbs. shellac.		
50	gall. varnish.		
358	tons chestnut coal.		
234	packing boxes.		
45	reams packing paper.		
Oak timber for blocks - - - - - -		432	feet.
Pine plank - - - - - - - - - -		713	feet.
Maple - - - - - - - - - -		230	"
225	lbs. nails, 1 gross screws.		

400 lbs. casteel.
93 lb. low moor iron.
1,595 " glandon iron.
383 " baynut do.
2,813 " old cast-iron.
125 " shafting iron.
13 kegs litharge - - - - - - 7,051 lbs.
70 lbs twine.
1 steam engine and shafting.
1 mill for cutting gum.
10 rubber grinders.
1 rag do.
1 filling mill.
2 soleing machines.
1 spreading mill.
1 calendar for spreading cloth.
1 machine for making sheets.
1 small machine.
1 dyeing do.
24 cans, not all perfect.
139 reels.
214 pairs men's boot trees, not all perfect.
40 " boys' " " " "
48 " women's " " " "
4,000 women's lasts " " "
3,000 men's " " " "

Declaration.

CIRCUIT COURT OF THE UNITED STATES,
Rhode Island district, sc.

HORACE H. DAY
vs.
NATHANIEL HAYWARD. } November Term, A. D. 1855.

Horace H. Day, of the city, county, and State of New York, a citizen of said State of New York, complains of Nathaniel Hayward, of Colchester, in the State of Connecticut, a citizen of said State of Connecticut, commorant of the city and county of Providence and State of Rhode Island, duly attached by the marshal in an action of the case: For that Edwin M. Chaffee, a citizen of the United States, was the original and first inventor and discoveror of a new and useful improvement in the application of undissolved caoutchouc to cloth, leather, and other articles, in coloring the same without the aid of a solvent, and in the machine used in the process as set forth in the letters patent hereinafter mentioned and described, the same being a new and useful improvement, and not known or used before in said invention and discovery, and not at the time of his application therefor, as hereinafter mentioned, in public use or on sale with his consent or allowance;

and the said Chaffee being so as aforesaid the original and first inventor thereof, made application in due form of law to the Commissioner of Patents for the United States, for said improvements, and paid thereon the patent fee of thirty dollars, and presented a model, specification and drawings, describing his aforesaid invention and improvements; and such proceedings were had thereon that letters patent were granted unto said Chaffee under seal of the Patent Office of the United States, signed by the Secretary of State, and countersigned by the Commissioner of Patents of the United States aforesaid, dated the thirty-first day of August, A. D. 1836, whereby the exclusive right and liberty to make, use, and vend to others to be used within the United States aforesaid, the said improvements and invention were secured to him, the said Chaffee, his heirs, administrators and assigns, for the term of fourteen years next after the date of said letters patent, ready to be produced in court, and which are of the following import, and to the following effect, viz:

THE UNITED STATES OF AMERICA,

To all to whom these letters patent shall come:

Whereas, Edwin M. Chaffee has alleged that he has invented a new and useful improvement in the application of undissolved caoutchouc to cloths, leather, and other articles, in coloring the same without the aid of a solvent, and in the machinery used in the process, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Edwin M. Chaffee, his heirs, administrators, or assigns, for the term of fourteen years from the thirty-first day of August, one thousand eight hundred and thirty-six, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Edwin M. Chaffee in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be
[L. S.] made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this thirty-first day of August, in the year of our Lord one thousand eight hundred and

thirty-six, and of the independence of the United States of America the sixty-first.

JOHN FORSYTH,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.

HENRY L. ELLSWORTH,
Commissioner of Patents.

The Schedule referred to in these Letters Patent and making part of the same.

To all to whom these presents shall come, I, Edwin M. Chaffee, of Roxbury, in the county of Norfolk and Commonwealth of Massachusetts, send greeting:

Be it known, that I, the said Edwin M. Chaffee, have invented, made, and applied to use a new and useful improvement in the preparing, coloring, and applying India-rubber to cloth of all kinds, leather, and other articles, without the use of a solvent, which I call "Chaffee's Improvement in Rubber," specified in the words and figures following, and exhibited in the drawings annexed. The India-rubber undergoes an operation, preparatory to its being applied to the cloth and other articles, and the following is a description of that part of the machinery and apparatus employed for the purpose: A hollow cylinder or roller six feet long and twenty-seven inches in diameter, heated by steam or otherwise to about two hundred degrees of Fahrenheit, is surmounted by another cylinder of like length and heated in like manner, and eighteen inches in diameter. The large and small cylinders come in contact with each other on one side, at about ten inches distant from the top of the large one. The large cylinder revolves much faster than the small one, so that there is a compound rolling and slipping action between the cylinders. Five bars are placed on the top of the large cylinder side by side each other, leaving a space of about three-fourths of an inch between them. The bars are one and a half inch thick, twelve inches wide, and about six feet long. The edges which lie in contact with the cylinder are convex or circular, and so constructed that when one corner of the edge touches it, the other recedes from it, thus leaving a wedgelike space for the rubber to enter between the bars. What I mean by the corner of the edge is, the angles formed by the two sides of the bars and their circular edges, the one being an acute and the other an obtuse angle, which are more or less acute or obtuse according to their situation on the cylinder—the said bars being substitutes for so many cylinders—but are better *to* sifting the coloring between them; they are held in contact with the cylinder, or nearly so, by weight or screws arranged for the purpose. If the rubber is to be colored, the coloring matter, in fine powder, should be sifted or otherwise put into the spaces between the bars, where it will be incorporated with the rubber as it passes between the bars and the cylinder. A revolving apron is attached to the machine which car-

ries the rubber between the two cylinders; or a plank may be substituted, if placed nearly in contact with the under side of the small cylinder, and the rubber put on in contact with the cylinder.

The operation of the foregoing apparatus is as follows: The rubber is first cut into pieces about two inches square, and from one-eighth to one-fourth of an inch thick; it is then spread upon the apron that conveys it to the cylinder, where the compound rolling and slipping action of the heated cylinders softens and tears the rubber into fine threads or thin sheets, which, at the same time, mixes with the coloring which is sifted into the spaces between the bars; thus it passes all the bars successively, and undergoes this operation several times before it goes from the preparing and coloring part of the machine, to the coating or covering part of the machine.

The coating or covering part of the machine or apparatus for applying the prepared rubber to the cloth and other articles, consists of four hollow cylinders, six feet long, heated by steam or otherwise to about two hundred degrees of Fahrenheit, placed one above the other. For conveniently describing their operation, I number them 1, 2, 3, and 4, beginning at the bottom. No. 1 is eighteen inches in diameter; Nos. 2 and 3 are each one foot in diameter; and No. 4 is eighteen inches in diameter; No. 3 moves much slower than the others, thus creating a compound rolling and slipping action between the surfaces of No. 2 and No. 3, and also between No. 3 and No. 4; sometimes the three first cylinders only are used; in which case the gearing for driving the 4th cylinder is disengaged and the cloth or other article to be coated is made to pass into the covering machine between the 2d and 3d cylinders, thence it passes half round the 2d and 1st cylinders, the rubber side coming in contact with the first and passing nearly round it, whence it is taken off and rolled up. The prepared rubber is conveyed by hand or otherwise from the preparing part of the machine, whilst warm, and put into the hopper which is placed between the second and third cylinders to receive it. The hopper is about two inches narrower than the cloth or other article intended to be coated. The cloth enters between the bottom and second cylinder, whilst the rubber enters between the bottom and third cylinder, when the coating of the cloth is effected. There is advantage in passing the rubber between the third and fourth cylinders, if the coating part of the machine before it comes in contact with the cloth which warms and softens it, so that it will adhere better to the cloth, to which also the rubber is presented more uniformly than when promiscuously put into the hopper. I sometimes put the prepared rubber directly upon the cloth or other article to be covered between the second and third cylinders, and then disengage the gearing of the third cylinder which will not then revolve. The bottom of the hopper in this case does not enter so far between the cylinders. The sides of the hopper must in all cases enter as far as possible without being pinched by the cylinders, to which they must be well fitted. Another mode of using this machine is as follows: The rubber alone enters between the second and third cylinders,

where it is formed into a sheet which passes half round the second, the cloth entering at the same time between the second and first, where the sheet of rubber is transferred from the cylinder to the cloth, then passing nearly round the first cylinder, where it is taken off and rolled up as before. In coloring I sometimes make the rubber into sheets, apply the coloring and roll the same into a mass, and then pass it through the cylinders, repeating until sufficiently colored. Again, I mix the coloring with small pieces of rubber and let them both go between the cylinders or cylinder and bars together—mix more and repeat until sufficiently colored, when it goes between a bar and cylinder or between two cylinders, one going faster than the other—the rubber comes through in fine particles as long as the coloring is added.

The machine is an entire one, although in the drawings herewith, for the purpose of exhibiting more distinctly the several parts and operations, it is divided into sections Nos. 1 and 2, and Nos. 3 and 4. Figure 1 is the coating part of the machine, and a perspective view of it exhibited in the drawing annexed.

A A A A A A is a cast-iron frame or housing for the rollers or cylinders. B is a brace connecting the two parts of the frame together. C C are two timbers upon which the frame stands; 2, 3 and 4 are the cylinders. No. 1 cylinder is behind the frame of bars D. D D D D D are five bars called checks through which the cloth passes before it enters the rolls. E is a roll upon which the cloth is wound before being coated. F is a check-weight attached to a cord passing over roll E. G G are screws regulating the pressure of the rolls 1, 2, 3 and 4. H is a cog-wheel that drives cylinder No. 1. I is a cog-wheel attached to the cylinder No. 4, and is driven by the wheel H. K is a cog-wheel attached to cylinder No. 3. L is a cog-wheel upon the roll No. 1. M is a pinion matching with K and L, and serves to give the proper direction to the wheel K, L being the driving wheel. N is a pulley attached to the roll or shaft O, seen in the sectional views; the shaft having a pinion upon its other end which drives the cog-wheel H.

At R is seen the cloth passing between the cylinders 2 and 3. At S is seen a sheet of India-rubber which comes in contact with the cloth whilst passing between the cylinders 2 and 3. P in the sectional view is a roller driven by the short belt from the shaft O. Q is a small roll upon which the cloth is wound when it leaves the cylinder No. 1. It is made to revolve by resting on the rolls O and P; the surface of O and P revolve a little faster than the cylinder No. 1. At T the cloth is seen leaving No. 1 cylinder. Between the cog-wheel H and the frame A is a cog-wheel upon the cylinder No. 1, and also one upon the cylinder No. 2—the wheels being the same size of the cylinders to which they respectively belong; that upon No. 1 drives the one upon No. 2, and consequently the cylinder No. 2, fig. 2, is a sectional view, the letters on which refer to the same parts as those on No. 1. U is a hopper, not seen in the perspective, into which the prepared rubber is put by hand or otherwise while hot as it comes from the preparing apparatus. When three rolls only are used, the hopper is put

upon the opposite side of the cylinders, between No. 2 and 3. Fig. 3 is a perspective view of the preparing part of the machine A A A. A A A is a frame of cast-iron. B B B B are timbers upon which the frame rests. C is a large cylinder 6 feet long and 27 inches in diameter. D is a cylinder 6 feet long and 18 inches in diameter. E is a shaft 6 inches diameter. M is a pinion upon the shaft E, which drives the cog-wheel K, and consequently the cylinder C. K is a cog-wheel upon the cylinder C. L is a pulley upon the shaft E, which is the first power. N is a cog-wheel upon the cylinder C, which drives the cog-wheel O upon the cylinder D. G G are screws regulating the pressure of the cylinders. F E are five bars of iron seen more distinctly in the sectional view; they are 1 foot wide, 1¾ inches thick, and about 7 feet long. H H are two blocks of iron having holes in them corresponding to the end of the bars F, into which the bars are put and fastened by keys. I I are screws regulating the pressure of the bars upon the cylinder C. S is an apron or endless belt which carries the rubber to be prepared, between the two cylinders C and D, (the same is more distinctly seen in the sectional view.) P Q are rolls around which the apron revolves, (the apparatus for propelling the rolls P Q is not represented.) At R in the sectional view is seen the prepared rubber as it leaves the last bar and shrinks up into a mass. Fig. 4 is a sectional view, the letters of which refer to the same parts as those of fig. 3.

What I claim as new and my invention is the preparation and application of India-rubber to all kinds of cloths, leathers, and other like substances, without the use of a solvent, in the manner aforesaid. I also claim the mixing of coloring with India-rubber without bringing it into a state of solution in manner above described, and I further claim the uses of the heated cylinders with the rolling and slipping action thereof, as applicable to India-rubber in the manner aforesaid, thereby preserving the strength of the rubber and at the same time applying it to and covering cloths, leathers, and like substances, with greater facility and at less expense than by any other process heretofore known or used.

EDWIN M. CHAFFEE.

Witnesses:
HORATIO BASS,
D. A. SIMMONS.

And the plaintiff further saith, that before the expiration of the original term for which said letters patent were granted, to wit, on the 30th day of August, A. D. 1850, upon the petition of said Chaffee made in due form of law, according to the acts of Congress in said cases made and provided, the Commissioner of Patents granted to said Chaffee an extension of said letters patent for the further term of seven years, from the 31st day of August A. D. 1851, as will appear by said extension of said letters patent ready to be produced in court, and which is of the following import and to the following effect, viz:

Whereas, upon the petition of Edwin M. Chaffee for an extension of the within patent, granted to him on the thirty-first day of August,

eighteen hundred and thirty-six, the undersigned Commissioner of Patents, in accordance with the 18th section of the act of Congress approved the 4th of July, 1836, entitled "An act to promote the progress of the useful arts and to repeal all acts heretofore made for that purpose," and the act approved the 27th of May, 1848, entitled "An act to provide additional examiners in the Patent Office, and for other purposes," did, on the thirtieth day of August, eighteen hundred and fifty, certify that said patent ought to be extended:

Now, therefore, I, Thomas Ewbank, Commissioner of Patents, by virtue of the power vested in me by said acts of Congress, do renew and extend said patent, and certify that the same is hereby extended for the term of seven years from and after the expiration of the first term, viz: the thirty-first day of August, eighteen hundred and fifty; which certificate on the petition of the applicant, together with this certificate, having been duly entered of record in the Patent Office, the said patent has now the same effect as though the same had been originally granted for the term of twenty-one years.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed, this thirtieth day of August, [L. S.] one thousand eight hundred and fifty, and of the independence the seventy-fifth.

THOS. EWBANK,
Commissioner of Patents.

Whereby the exclusive right and privilege to make, use, and vend to others to be used said invention and improvements, were secured to the said Chaffee, his heirs, administrators and assigns, for the term of seven years next after the expiration of the original term for which said letters patent were granted.

And the plaintiff further saith, that before the said Edwin M. Chaffee obtained the said letters patent, he delivered to the Commissioner of Patents a written description of his said invention and improvement, and of the manner of and process of making, constructing and using the same, in such full, clear and exact terms as to enable any person skilled in the arts to which it appertains, or with which it is most nearly connected, to make, construct and use the same; and he did, in and by said description, fully explain the principle and several modes in which he contemplated the application of the principle in character, by which the said improvement may be distinguished from other inventions; and did also particularly specify and point out the parts, improvements and combination which he claimed as his own invention or discovery, and did also accompany the whole with drawings and written references, showing and representing his said invention; which said description and drawings were duly signed by the said Edwin M. Chaffee, and attested by two witnesses, and duly filed in said Patent Office; and did also furnish and deliver to the said Commissioner of Patents a model of his said invention, and did in all respects comply with the requirements of the statutes entitling him to receive said letters patent.

And the plaintiff further avers, that said improvement was not known

or used by others before the invention or discovery thereof by the said Edwin M. Chaffee; that the same then was a new and useful invention, and was not, at the time of the application of the said Edwin M. Chaffee for the letters patent aforesaid, in public use or on sale with his consent or allowance, as the inventor or discoverer of the same.

And the plaintiff further saith, that the said Chaffee afterwards, to wit, on the first day of July, A. D. 1853, for a valuable consideration therein expressed, to him paid by the said plaintiff, sold and assigned to the said plaintiff, his heirs, administrators and assigns, all his, said Chaffee's right, title and interest in and to said letters patent so extended as aforesaid, and to said improvements and invention, by his deed of assignment thereof, duly executed and recorded in the Patent Office of the United States aforesaid, according to the statutes in such cases made and provided, whereby all the rights and privileges which were secured to the said Edwin M. Chaffee, his heirs, administrators and assigns by said letters patent, and the extension thereof as aforesaid, accrued to the said plaintiff, his heirs, administrators and assigns, as will by said assignment to be produced in court appear.

And the plaintiff further saith, that the defendant well knowing the premises, but contriving and intending to injure the said plaintiff in that behalf, and wrongfully to deprive him of the benefit of said patent right, so secured to the said plaintiff by the assignment of said letters patent from said Chaffee as aforesaid, heretofore, to wit, at Colchester, in the State of Connecticut, to wit, at said Providence, within said district of Rhode Island, on the first day of July, A. D. 1853, and on divers days since that time, and until the commencement of this suit, has used and continued to use said improvements, and has by the use of said improvements prepared and applied large quantities of India-rubber, to wit, ten hundred tons, to all kinds of cloths, leathers, and other like substances, without the use of a solvent, according to the plan and directions contained in said letters patent and the process therein described; and also has prepared large quantities of India-rubber, to wit, ten hundred tons, by mixing coloring with the same without bringing it into a state of solution in manner described in said letters patent; and also has prepared large quantities of India-rubber, to wit, ten hundred tons, and wrought the same into articles of merchandise according to the plan and process described in said letters patent, and the same has sold, whereby the said plaintiff has been greatly injured and deprived of great profits and advantages which he might and otherwise would have derived from said invention and letters patent so secured to him as aforesaid, and has sustained actual damage to a great amount, to wit, to the amount of two hundred thousand dollars, and by force of the statute aforesaid, an action hath accrued to the plaintiff to recover of the defendant said actual damage and such additional amount, not exceeding in the whole three times the amount of such actual damage as the court may see fit to order and adjudge.

Yet the said defendant, though often requested, hath ever refused, and still doth refuse to pay such sum or any part thereof, to the plain-

tiff's damage two hundred thousand dollars, as laid in his writ, dated the twenty-second day of October, A. D. 1855.

Wherefore he sues by his attorney, T. A. JENCKES.

Whereupon the defendant enters the following

Plea.

CIRCUIT COURT OF THE UNITED STATES,
Rhode Island district, sc.

November term, A. D. 1855.

And the said defendant, Nathaniel Hayward, in his own proper person comes and says, that this court ought not to have or take further cognizance of the action aforesaid as against him, because he says that he is and was at the time of the pretended service of the writ in said cause an inhabitant of the district of Connecticut, and was not an inhabitant of the district of Rhode Island, nor was he at the time of the pretended service of the writ in said cause within said district of Rhode Island. And that the said supposed causes of action, and each and every of them, if any such have accrued to the plaintiff as against this defendant, accrued to the said plaintiff as against this defendant out of the jurisdiction of this court; that is to say, in the district of Connecticut, or in such district of the United States as this defendant might be found within at the time of serving the writ therefor, and not in the district of Rhode Island, within the jurisdiction of this court. And this the said defendant is ready to verify.

Wherefore he prays judgment whether this court can or will take cognizance of the action aforesaid as against him.

NATHANIEL HAYWARD.

The said Nathaniel Hayward maketh oath and saith, that the plea hereunto annexed is true in substance and fact.

Before me, HENRY PITMAN, *Clerk*
Circuit Court U. S. R. I. district.

To which plea the plaintiff, by his attorney, filed the following

Demurrer.

CIRCUIT COURT UNITED STATES.

November term, 1855.

And the said plaintiff, as to the said plea of the said defendant by him above pleaded, saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant in this court and in this district, and that the said plaintiff is not bound by law to answer the same. And this the said plaintiff is ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and his

damages by him sustained on occasion of the committing of the said grievances by the said defendant, to be adjudged to him and for his costs.

By his attorney, T. A. JENCKES.

This cause came on to be heard at said November term, upon the said demurrer, and was argued by counsel and held by the court for advisement. And now at the present June term of said circuit court, A. D. 1856, the court deliver an opinion in said cause, overruling the said demurrer and sustaining the said plea.

Whereupon the court order, and the said action is hereby dismissed for want of jurisdiction.

To which decision of the court the plantiff files the following motion:

Motion for Writ of Error.

CIRCUIT COURT OF THE UNITED STATES,
Rhode Island district, sc.

June Term, 1856.

The plaintiff excepts to the decision of the court in said case overruling the demurrer to the plea of the defendant in said cause, and sustaining said plea, because they aver that said decision was erroneous, and they pray that they may be allowed a writ of error thereon to the Supreme Court of the United States.

By his attorney, T. A. JENCKES.

The plff. files his bond according to the statutes.
September 20th, 1856. Allowed.

JOHN PITMAN,
District Judge U. S. Rhode Island district.

Bond on Appeal.

CIRCUIT COURT OF THE UNITED STATES,
For the district of Rhode Island.

HORACE H. DAY
vs.
NATHANIEL HAYWARD. } At Law.

Know all men by these presents, that Horace H. Day, of the city, county and State of New York, as principal, and William W. Brown, of the city of Providence and the State of Rhode Island, as surety, are held and firmly bound unto the said Nathaniel Hayward of Colchester, in the State of Connecticut, the defendant in the above entitled suit, in the sum of one thousand dollars, to be paid to the said Nathaniel Hayward, his executors, and administrators; to which payment well and truly to be made, the said Horace H. Day as principal, and William W. Brown as surety, bind themselves, and each of them, jointly and severally, and their and each of their heirs, executors and administrators.

In witness whereof the said Day and the said Brown have hereunto

set their hands and seals, this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six.

The condition of this obligation is, that whereas Horace H. Day has prosecuted a writ of error to the Supreme Court of the United States in the above entitled cause, to reverse the judgment rendered therein against him, in favor of the said Nathaniel Hayward, by the circuit court of the United States, for the first circuit, within and for the district of Rhode Island, at its June term, 1856:

Now, therefore, the condition of this obligation is such, that if the said Horace H. Day shall prosecute his suit with effect, and answer all damages and costs if he fail to make his plea good, then this obligation shall be void, otherwise shall be and remain in full force.

HORACE H. DAY, [L. S.]
WILLIAM W. BROWN. [L. S.]

The date changed to the fifteenth of September before execution and delivery.

CHARLES V. WARE,
Witness to signature of Wm. W. Brown.

September 20th, 1856. Approved.

JOHN PITMAN,
District Judge U. States, Rhode Island district.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

CLERK'S OFFICE, CIRCUIT COURT,
AT PROVIDENCE, *October 24th*, 1856.

I, Henry Pitman, clerk of the circuit court of the United States for the first circuit, within and for the Rhode Island district, do hereby certify, that the foregoing twenty-eight pages contain a true copy from the record of the case at law, Horace H. Day vs. Nathaniel Hayward, disposed of June term, 1856; and also of the motion for writ of error, and bond for costs entered therein, duly examined and compared.

[L. S.] In testimony whereof I have hereunto set my hand and seal of said circuit court on the day and year above written.

HENRY PITMAN, *Clerk.*

Writ of Error.

UNITED STATES, *sc.*

The President of the United States, to the Judges of the Circuit Court [L. S.] of the United States holden in and for the Rhode Island district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between Horace H. Day, plaintiff, and Nathaniel Hayward, defendant, a manifest error hath happened to the great damage of the said Horace H. Day, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do com-